

---

**Natural Resources, Ecology &  
Parks Committee**

---

**HB 1346**

**Brief Description:** Improving the efficiency and predictability of the hydraulic project approval program.

**Sponsors:** Representatives Buck, B. Sullivan, Kretz, DeBolt, Blake, Eickmeyer and Takko.

**Brief Summary of Bill**

- Directs the Department of Fish and Wildlife to develop general permits for common activities including minor dredging projects, replacement of pilings, and routine maintenance and repair of existing structures.
- Establishes an expedited dispute resolution process and a review committee to review hydraulic permit decisions and accept, reject, or determine alternative permit conditions.
- Authorizes permit applicants to submit certain existing regulatory permits as equivalent to requirements for hydraulic permits.
- Repeals, recodifies and reorganizes Chapter 77.55 RCW, the Hydraulics Code, and creates a definition section and an intent section.

**Hearing Date:** 2/11/05

**Staff:** Jeff Olsen (786-7157).

**Background:**

A person must obtain a hydraulic project approval (HPA) for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state before beginning construction. HPAs are issued by the Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

The WDFW is statutorily authorized to issue programmatic HPAs for small scale mining and prospecting, and for activities or projects conducted solely for the removal or control of certain aquatic weeds. The programmatic approval is in lieu of an applicant obtaining an individual HPA. Under the programmatic approval process, the WDFW publishes a pamphlet that states the rules for that activity.

HPA decisions may be appealed to the Director of the WDFW (Director) under the provisions of the Administrative Procedure Act. The appeal may be heard by the Director or an administrative law judge, but final appeal decisions are made by the Director. Certain appeals related to agriculture or off-site mitigation are heard by the Hydraulic Appeals Board (Board), consisting of the directors of the WDFW, the Department of Ecology, and the Department of Agriculture.

Engrossed Substitute Senate Bill 6387, Section 307 (23) passed by the 2002 Legislature created the Hydraulic Project Approval Task Force (Task Force). The Task Force was directed to conduct an evaluation of the HPA program and make recommendations to the Legislature by November 30, 2002. The Task Force recommended all formal HPA appeals should be the jurisdiction of the Board. The Task Force also recommended that the WDFW cooperate with other regulatory agencies to avoid duplicative reviews and project delays.

### **Summary of Bill:**

The WDFW must develop general hydraulic permits for common or routine activities by December 2006, and may develop additional general permits. The permits must contain conditions necessary to protect fish life, and must clearly delineate predictable conditions and restrictions that project applicants may incorporate into project design and construction. The WDFW must make available the following information: a description of activities covered by each general permit; the conditions a project applicant must follow to receive coverage under the permit; and, a notice of intent form for use by project applicants. A project applicant may receive coverage under a general permit by sending the notice of intent to the WDFW 21 days before construction is to begin. The WDFW must notify the project applicant within 10 days regarding the status of the permit. Project applicants may appeal the permit decision to the Hydraulic Appeals Board within 30 days of the notice of decision.

Project applicants may request an exemption from HPA permit requirements if equivalent review is provided through other federal and state regulatory permits. Equivalent review may include federal review of a project under the Endangered Species Act, a federal permit under Section 404 of the Water Pollution Control Act, state review under section 401 of the Clean Water Act, or state review under the Shoreline Management Act. The Director or the Director's designee shall make a determination regarding equivalency within 15 days. If the WDFW denies the request, the WDFW must identify why the other regulatory reviews do not adequately protect fish life. Persons seeking appeal of decisions made regarding permit equivalency may appeal according to procedures in the Administrative Procedure Act.

At the request of a city, county, or private party, the WDFW must develop five-year renewable maintenance or mitigation agreements for flood damage repair or reduction under agreed-upon conditions. The hydraulic permit must allow for bank stabilization, bridge repair, removal of sandbars, channel maintenance, and other flood damage repair and reduction activities. Individual hydraulic permits are not required for specific projects covered by the maintenance agreement.

An expedited dispute resolution process is created. An applicant may request dispute resolution at any point prior to permit issuance. The WDFW must convene a review committee including the project applicant's engineer, a WDFW engineer, the WDFW regional program manager, and an engineer from the local government with jurisdiction over the project. The review committee may accept the hydraulic permit conditions, propose alternative conditions, or return the hydraulic permit to the WDFW for further review.

Appeals of HPA decisions are consolidated under the jurisdiction of the Hydraulics Appeals Board. In addition, for all HPAs issued, the burden of proof is upon the WDFW to show that denial or conditioning of a permit is solely aimed at the protection of fish life.

Chapter 77.55 RCW is recodified and four sections are repealed and rewritten as new sections. A legislative intent section and definitions for the chapter are established. New definitions are established for certain terms, and there are changes to certain definitions, including the definition for ordinary high water line in fresh water and state waters. A new chapter is created for sections relating to fishways, flow, and screening.

**Appropriation:** None.

**Fiscal Note:** Requested on 2/1/05.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.